

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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Refer Reply To:

CC:FIP:B03

PLR-100545-14

Date:

April 23, 2014

LEGEND:

Trust =

Subsidiary =

Company A =

Company B =

Company C =

Company D =

Company E =

Company F =

Firm A =

Firm B =

Firm C =

Firm D =

Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Year 1	=
<u>a</u>	=

Dear :

This ruling responds to a letter dated December 20, 2013, and subsequent correspondence, submitted on behalf of Trust and Subsidiary. Trust and Subsidiary request an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 856(l) of the Internal Revenue Code to treat Subsidiary as a taxable REIT subsidiary (TRS) of Trust.

FACTS

Company A is the indirect parent of Subsidiary. Company A is the general partner of Company B. Company B is the manager of Trust. Trust is an entity that has made an election to be treated as a real estate investment trust (REIT) under § 856 of the Code. Trust owns a partnership interest in Company C. Company C owns a percent of Company D. Company D owns an interest in Company E and Subsidiary. Subsidiary owns an interest in Company F.

Subsidiary was formed on Date 1. On Date 2, Trust and its affiliates closed on a transaction to acquire a group of hotels (the "Transaction"). As part of the Transaction, Company E acquired a number of hotels and entered into a master-lease of the hotels to Company F. In the year following the Transaction, Trust took steps to update its REIT compliance checklist. As part of that process, on Date 3, Firm A asked Trust if it had a copy of the Form 8875 TRS election for Subsidiary. Firm A is Trust's accounting and tax consultant. Trust did not have the form. Trust immediately asked Firm B if it had a copy of the Form 8875 TRS election. Firm B is the law firm that had prepared

and reviewed the underlying legal documents for the Transaction. Firm B checked its files but did not find a copy of the Form 8875 TRS election. After reviewing the matter, Firm B made the recommendation to Trust and Subsidiary to file for an extension of time to make the TRS election pursuant to § 301.9100 of the Regulations. On Date 4, Trust began the process of submitting a request for a private letter ruling that would grant permission to make a late TRS election.

Trust and Subsidiary represent that relevant documents relating to the Transaction demonstrate that the Form 8875 TRS election was intended to be filed to take effect as of the closing of the Transaction on Date 2, and that the non-filing was an oversight. Article VII of Subsidiary's operating agreement stated that the sole member of Subsidiary "shall" elect to have Subsidiary be treated (i) as a corporation for tax purposes (the Form 8832 election) and (ii) as a TRS as such term is defined in § 856(l) of the Code (the Form 8875 election). Additionally, a Date 5 transfer pricing report done by Firm C for the transfer pricing study from Company E to Company F specifically mentions a Form 8875 TRS election applying to the income from Company F. Firm C was responsible for preparing the tax returns for Trust and Subsidiary. Furthermore, Subsidiary's Year 1 tax returns reflect a TRS election.

The closing checklist for the Transaction referred to "corporate tax election" for the entity as an action that needed to be taken. The term "corporate tax election" was the closing checklist language used when the Transaction was originally contemplated to not involve a REIT as an investor. However, when the transaction was changed to involve a REIT, Firm B failed to update the closing checklist to include the Form 8875 TRS election.

The filing of the tax elections with respect to Subsidiary was the responsibility of Firm C. Based on the closing checklist, Firm D directed Firm C by e-mail on Date 6 to file Form 8832. Firm C was not provided Subsidiary's operating agreement or the closing checklist. Firm C filed the Form 8832 election on Date 7. Although Subsidiary's operating agreement stated that both Form 8832 and Form 8875 should be filed, the Form 8875 was not filed. Trust and Subsidiary assert the failure to file the TRS election was an oversight due to a misunderstanding among Firm B, Firm C, and Firm D.

Affidavits on behalf of Trust and Subsidiary were provided with the submission as required by § 301.9100-3(e) of the Regulations.

Trust and Subsidiary make the following additional representations:

1. The request for relief was filed by Trust and Subsidiary before the failure to make the regulatory election was discovered by the Internal Revenue Service (Service).

2. Granting the relief will not result in Trust or Subsidiary having a lower tax liability in the aggregate for all years to which the regulatory election applies than that Trust or Subsidiary would have had if the election had been timely made (taking into account the time value of money).
3. Trust and Subsidiary did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under § 6662 of the Code at the time Trust and Subsidiary requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Trust and Subsidiary did not choose to not file the election.

LAW AND ANALYSIS

Section 856(l) of the Code provides that a REIT and a corporation (other than a REIT) may jointly elect to treat such corporation as a TRS. To be eligible for treatment as a TRS, § 856(l)(1) provides that the REIT must directly or indirectly own stock in the corporation, and the REIT and the corporation must jointly elect such treatment. The election is irrevocable once made, unless both the REIT and the subsidiary consent to its revocation. In addition, the election and the revocation may be made without the consent of the Secretary.

In Announcement 2001-17, 2001-1 C.B. 716, the Service announced the availability of Form 8875, "Taxable REIT Subsidiary Election." The Announcement provides that this form is to be used for tax years beginning after 2000 for eligible entities to elect treatment as a TRS. The instructions to Form 8875 provide that the subsidiary and the REIT can make the election at any time during the tax year. However, the effective date of the election depends upon when the Form 8875 is filed. The instructions further provide that the effective date on the form cannot be more than 2 months and 15 days prior to the date of filing the election, or more than 12 months after the date of filing the election. If no date is specified on the form, the election is effective on the date the form is filed with the Service.

Section 301.9100-1(c) of the Regulations provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the Service generally will use to determine whether, under the particular facts and circumstances of each

situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith. Section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

CONCLUSION

Based on the information submitted and representations made, we conclude that Trust and Subsidiary have satisfied the requirements for granting a reasonable extension of time to elect under § 856(l) to treat Subsidiary as a TRS of Trust, effective as of Date 2. Trust and Subsidiary have 60 calendar days from the date of this letter to make the intended election.

This ruling is limited to the timeliness of the filing of the Form 8875. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed with regard to whether Trust qualifies as a REIT or whether Subsidiary otherwise qualifies as a TRS under subchapter M of the Code.

No opinion is expressed with regard to whether the tax liability of either Trust or Subsidiary is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

K. Scott Brown
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Copy for section 6110 purposes